

REMARKS IN RESPONSE TO THE OFFICE ACTION:

Claims 4, 6–14, 16 and 17 are currently pending in the application. Claims 8–14 have been allowed. Claims 4, 6, 7, 16, and 17 stand rejected as allegedly unpatentable for obviousness-type double patenting in view of claims 4–13 of U.S. Patent No. 6,248,697. Claim 4 also stands rejected under 35 U.S.C. § 101 as allegedly claiming the same invention as claim 5 of U.S. Patent No. 6,248,697. Applicants respectfully traverse the rejections.

Claim 4 has been amended to recite that the digging fluid used in the claimed method contains from 0.1% to about 50.0 weight percent sodium silicate. Because claim 5 of U.S. Patent No. 6,248,697 does not recite any numerical range for the amount of sodium silicate, claim 4 as amended herein does not claim the same invention as claim 5 of U.S. Patent No. 6,248,697. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claim 4 under 35 U.S.C. § 101 in view of this amendment.

Applicants respectfully submit herewith a terminal disclaimer to overcome the obviousness-type double patenting rejection of claims 4, 6, 7, 16 and 17. Although Applicants do not concede that the obviousness-type double patenting rejection was proper, the terminal disclaimer is submitted to expedite allowance and issue of the application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. § 1.16 or § 1.17 that may be required in connection with this paper, or credit any overpayment, to Deposit Account No. 01-2508, referencing Order No. 11084.0015.CNUS02.

The Examiner is invited to contact the undersigned attorney by telephone to discuss any issues or questions presented by this paper or otherwise remaining in the application.

Respectfully submitted,



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